

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

Ex parte JOHN P. SENATORE

JAN 16 2003

**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

Appeal No. 2002-1396
Application No. 09/422,324

ON BRIEF

Before JERRY SMITH, BLANKENSHIP, and SAADAT, Administrative Patent Judges.
BLANKENSHIP, Administrative Patent Judge.

REMAND TO EXAMINER

This is a remand of the appeal under 35 U.S.C. § 134 from the final rejection of claims 4-8, in accordance with 37 CFR § 1.196(a), (e). After considering the record before us, we are convinced that the instant appeal is not ready for meaningful review. For the principal reason that pertinent areas of prior art have not been searched, we remand the application to the examiner to consider the following issues, and to take appropriate action.

BACKGROUND

The disclosed invention is directed to a camera mounted to the dashboard of a vehicle. The camera has multiple lenses directed at different orientations, and is connected to a recording unit for storing the images. Claim 4 is reproduced below.

4. An observation and recording system for a motor vehicle comprising:

camera means carried by the motor vehicle, said camera means being directed at a road in front of the vehicle and at a driver of the motor vehicle and

means for recording images of the road in front of the vehicle and of the driver of the motor vehicle observed by said camera means.

The examiner relies on the following references:

Peterson	4,789,904	Dec. 6, 1988
Secor	5,289,321	Feb. 22, 1994

Claims 4 and 7 stand rejected under 35 U.S.C. § 102 as being anticipated by Peterson.

Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over Peterson.

Claims 5 and 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Peterson and Secor.

We refer to the Final Rejection (Paper No. 6) and the Examiner's Answer (Paper No. 12) for a statement of the examiner's position and to the Brief (Paper No. 11) for appellant's position with respect to the claims which stand rejected.

OPINION

Appellant argues that independent claim 4 is not anticipated by Peterson. According to appellant, Peterson does not disclose camera means being directed at a road in front of the vehicle and at a driver of the motor vehicle. (Brief at 5.) Appellant argues that the driver of the vehicle, as claimed, is the driver of the vehicle when the vehicle is being driven, and not a "driver" standing outside of the vehicle, at which point the driver ceases to be a driver and becomes a pedestrian. (Id.)

The examiner responds (Answer at 6-7) that column 3, lines 57 through 67 of Peterson teaches that the camera is directed at the front of the vehicle and the driver of the motor vehicle. In the examiner's view, the officer who is in the vehicle is being recorded by the camera in Peterson's Figure 1, along with other pertinent information in front of the vehicle.

Peterson discloses a vehicle (patrol car) 10 equipped with a camera 12 (Fig. 1). The camera includes a wide angle, high resolution lens, and views the scene in front of the patrol car through the front windshield. Col. 2, ll. 24-35. The camera is associated with a video recorder 16, housed within a vault 20 mounted in the trunk of the patrol car 10. Col. 3, ll. 5-17; Fig. 2. Peterson further describes the system as capable of recording the identity of a motorist, license plates, make and model of the automobile "and the conduct of both the officer and the motorist...." Col. 3, ll. 57-67.

If the examiner's position is that camera 12 of Peterson simultaneously records images of the road in front of the patrol car and images within the passenger

compartment of the vehicle, we disagree. In view of Peterson's written description and the placement of the forward-facing lens shown as part of camera 12 (Fig. 1), well in front of the passenger compartment, we conclude that Peterson does not show, or even contemplate, a camera being directed at a road in front of the vehicle and in an opposed direction (i.e., toward the passenger compartment of the vehicle). Nor does Peterson describe any structure for rotating the camera away from its forward-facing axis. Apparently, the wide angle lens makes panning or tilting of the camera unnecessary.

If, on the other hand, the examiner's position is that the language of claim 4 does not distinguish over the case of camera 12 being directed at the road in front of the vehicle, while an officer (who may have driven the vehicle) stands in front of the camera, we agree. Appellant could have drafted or amended the claim to recite relationships between elements of the structures set forth in the claim (i.e., the camera means and the vehicle) to bring out the alleged distinguishing feature, rather than relying on semantic arguments -- which we consider specious -- concerning a human being who is not properly part of the combination.

We agree with appellant, however, that Secor fails to teach a "means for recording information from the odometer and the speedometer of the vehicle," as required by instant claims 5 and 6. Although LCD screens 40, 42, and 44 of Secor are associated with the cameras directed at views of traffic, elements 46 and 50 of Figure 5

Appeal No. 2002-1396
Application No. 09/422,324

appear to represent no more than display elements in the digital instrument cluster within in-dash display 36. Col. 4, ll. 27-48.

However, a cursory search of the U.S. patent database in Classes 396 (Photography) and 352 (Optics: Motion Pictures) reveals disclosures related to cameras acquiring images of vehicle instrument panels, and thus more pertinent than the art applied in this case. (See, e.g., U.S. Patent 4,093,364 to Miller; U.S. Patent 3,032,766 to Weaver.)

The examiner should expand the prior-art search to include at least Class 396 (Photography), subclass 332 (plural image recording, simultaneous recording of plural distinct subjects), subclass 427 (camera support, surveillance type), and Class 352 (Optics: Motion Pictures), subclass 131 (combined with diverse-type device, manned vehicle).

The examiner should also take the opportunity to update the areas previously searched. The examiner should evaluate U.S. Patent 6,333,759 to Mazzilli, issued December 25, 2001, filed January 28, 2000, which purports to be a "continuation in part" of a provisional patent application filed March 16, 1999.

Appeal No. 2002-1396
Application No. 09/422,324


CONCLUSION


The instant application is remanded to the examiner for consideration of the aforementioned issues and to take action accordingly.

This application, by virtue of its “special” status, requires an immediate action. MPEP § 708.01 (8th ed., rev. 1, Feb. 2003). It is important that the Board be informed promptly of any action affecting the status of the appeal.

REMANDED

Jerry Smith
JERRY SMITH
Administrative Patent Judge


HOWARD B. BLANKENSHIP
Administrative Patent Judge


MAHSHID D. SAADAT
Administrative Patent Judge

BOARD OF PATENT
APPEALS
AND
INTERFERENCES

Appeal No. 2002-1396
Application No. 09/422,324

NORMAN E. LEHRER, P.C.
1205 NORTH KINGS HIGHWAY
CHERRY HILL , NJ 08034